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Attorneys for: Wells Fargo Bank, N.A.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA – TUCSON DIVISION

In re

Case No. 4:15-bk-02229-SHG

DAVID B. KARMEL,

Chapter 11

Debtor.

**STIPULATION RE TREATMENT OF
CLAIM UNDER DEBTOR'S
PROPOSED CHAPTER 11 PLAN OF
REORGANIZATION**

SUBJECT PROPERTY:

8041 E Alvin Rd,
Tucson, Arizona 85750

This Stipulation is entered into by and between Wells Fargo Bank, N.A. ("Wells Fargo") by and through its attorneys of record, and Debtor, David B. Karmel ("Debtor"), by his attorney of record.

The property which is the subject of this matter is commonly known as 8041 E Alvin Rd, Tucson, Arizona 85750 (“Property”), which is more fully described in the Deed of Trust. (See Claim No. 6-1).

1 On May 3, 2005, Debtor executed a promissory note (the “First Note”) in the principal sum
2 of \$485,000.00. The First Note is secured by a Deed of Trust (the “First Deed of Trust”) granting an
3 interest in the Property. The First Deed of Trust reflects that it was duly recorded in the Pima County
4 Recorder’s Office. (*See* Claim No. 8-1).

5 On March 4, 2015, Debtor commenced the instant bankruptcy case, by filing a voluntary
6 petition under Chapter 13 of the Bankruptcy Code in the District of Arizona – Tucson Division, and
7 was assigned bankruptcy case number 4:15-bk-02229-SHG (the “Bankruptcy Case”). (*See* Dkt. No.
8 1). On March 4, 2016, the court entered an Order Converting the Debtor’s Bankruptcy Case to
9 Chapter 11 under the Bankruptcy Code. (*See* Dkt No. 87).

10 On June 30, 2015, Wells Fargo filed its Proof of Claim for the First Note listing a secured
11 claim of \$396,066.72, including pre-petition arrears of \$54,937.00. (*See* Claim No. 8-1).

12 On December 12, 2016, the Debtor filed his proposed First Amended Chapter 11 Plan of
13 Reorganization (“Plan”) and Amended Disclosure Statement. (*See* Dkt Nos. 175-176).

14 On December 27, 2016, Wells Fargo filed its Objection to Confirmation of the Plan
15 (“Objection”). (*See* Docket No. 183).

16 As of February 28, 2017, the approximate amount owed under the First Note is \$109,408.36.

17 **THE PARTIES STIPULATE AS FOLLOWS:**

18 1. Wells Fargo’s claim shall remain fully secured (“Secured Claim”) in the Debtor’s
19 Chapter 11 Plan, paid pursuant to the terms of Subject Loan documents except as modified below.

20 2. Debtor shall tender regular contractual payments of **\$2,867.76** (“Contractual
21 Payment”) to Wells Fargo pursuant to the terms of the Subject Loan commencing **March 1, 2017**
22 and continuing on the same day of each month thereafter until the outstanding balance owed on
23 Wells Fargo’s Secured Claim has been paid in full. This amount includes an escrow impound for
24 taxes and insurance and is subject to change pursuant to the terms of the Subject Loan.

25 3. In addition to Contractual Payments, Debtor shall tender arrearage payments to Wells
26 Fargo to cure the contractual arrears of \$109,408.36 over seventy two (72) equal monthly
27 installments (“Arrearage Payments”). Arrearage Payments of **\$1,519.56** shall commence **March 1,
28 2017** and shall continue on the same day of each month thereafter until the contractual arrears have

1 been cured in full.

2 4. Except as otherwise expressly provided herein, all remaining terms of the Note and
3 Deed of Trust shall govern the treatment of Wells Fargo's Secured Claim.

4 5. The automatic stay of 11 U.S.C. § 362 shall terminate upon Confirmation of the Plan. In
5 the event Wells Fargo has yet to receive a payment due under the Plan within thirty (30) calendar days
6 of the payment due date, the Debtor shall be in material default under the terms of the Plan ("Material
7 Default"). In the event of a Material Default, the cure terms of paragraph three of this Stipulation shall
8 be void, and Wells Fargo may proceed with default remedies under applicable state law, including
9 foreclosure. In the event of a Material Default, the Debtor must cure the contractual amount due under
10 the Note to reinstate the loan. Wells Fargo shall not be required to suspend any foreclosure action
11 commenced under state law following a Material Default unless the contractual amount due under the
12 Note is paid in full. The Debtor understands that his right to cure the arrears over 60 months shall
13 terminate in the event of a Material Default.

14 6. The acceptance by Wells Fargo of a late or partial payment shall not act as a waiver
15 of Wells Fargo's right to proceed hereunder.

16 7. The terms of this Stipulation are contingent upon the substantial consummation of the
17 Debtor's confirmed Plan. The terms of this Stipulation shall be incorporated into any Amended Plan
18 and/or the Order of Confirmation. In the event of any discrepancy between the terms of this
19 Stipulation and the terms of the Debtor's Plan, the terms of this Stipulation shall control the
20 treatment of Wells Fargo's claim.

21 8. In the event the Debtor's case is dismissed or converted to any other chapter under
22 Title 11 of the United States Bankruptcy Code prior to completion of the Debtor's Chapter 11 Plan
23 payments, receipt of a discharge, and entry of a final decree, the terms of this Stipulation shall be
24 void and Wells Fargo shall retain its lien in the full amount due under the Note.

25 9. In the event the Debtor seeks to sell the Property prior to receipt of a discharge, the
26 parties shall retain all rights under 11 U.S.C. §363.

27 10. Debtor understands that the Subject Loan may reflect a default while the Arrearage
28 Payments are made. However, Wells Fargo shall not proceed with default remedies during the 60-

1 month Plan period provided that the payments are timely made. Wells Fargo shall not be required to
2 release the loan from bankruptcy status until entry of a final decree and the close of the Debtor's
3 Chapter 11 case. Wells Fargo shall not be required to send the Debtor monthly statements while the
4 bankruptcy case remains open.

5 11. The above terms allow the Debtor to make Arrearage Payments to Wells Fargo
6 during the Plan. Confirmation of the Plan shall not constitute a reinstatement of the Subject Loan as
7 of the Effective Date of the Plan. In the event of a Material Default, Wells Fargo shall proceed with
8 default remedies as described in paragraph five (5) of this Stipulation. In the event Wells Fargo has
9 previously recorded a Notice of Default or Notice of Sale pursuant to applicable state law based on a
10 prior default under the Subject Loan, these documents shall remain in full force and effect in the
11 event the Debtor defaults.

12 12. In the event the Debtor asserts that Wells Fargo has failed to properly update its
13 internal system to comply with the terms of this Stipulation within a reasonable period of time after
14 an order is entered confirming the Debtor's Chapter 11 Plan of Reorganization, which shall be no
15 less than ninety (90) days, the Debtor shall be required to provide written notice of the alleged lack
16 of compliance to Wells Fargo and Wells Fargo's counsel of record, Aldridge Pite, LLP at 4375
17 Jutland Drive, Suite 200, San Diego, CA 92117, indicating the nature of the alleged lack of
18 compliance. If Wells Fargo fails to either remedy the alleged lack of compliance and/or provide an
19 explanation refuting the Debtor's allegation after the passage of ninety (90) days from the date Wells
20 Fargo receives said written notice (the "Meet and Confer Period") the Debtor may proceed with
21 filing the appropriate motion in bankruptcy court seeking Wells Fargo's compliance.

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4 13. Wells Fargo shall cast a ballot accepting the Debtor's proposed Chapter 11 Plan of
5 Reorganization if such Plan and/or Order of Confirmation incorporates fully the terms of this
6 Stipulation and the Debtor is in compliance with the terms of the Stipulation as of the ballot
7 deadline. Wells Fargo hereby withdraws its Objection to Confirmation of the Plan.

8 **IT IS SO STIPULATED:**

9 Dated:

/s/ C.R. Hyde (with permission)

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CHARLES R. HYDE
11 Attorney for Debtor

12 **ALDRIDGE | PITE, LLP**

13 Dated: February 9, 2017

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Janet M. Spears
15 _____
16 JANET M. SPEARS

17 Attorneys for Wells Fargo